

House Bill 1239

By: Representatives Neal of the 1<sup>st</sup> and Stephens of the 164<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales  
2 and use taxes, so as to provide for a program of tax refunds for companies creating new  
3 tourism attractions; to provide for a short title; to provide for definitions; to provide for  
4 legislative findings; to provide for conditions of eligibility and approval; to provide for  
5 agreements; to provide for procedures, conditions, and limitations; to provide for powers,  
6 duties, and responsibilities of the commissioner of community affairs and the Department  
7 of Community Affairs and the governing authorities of counties and municipalities; to  
8 provide for powers, duties, and authority of the state revenue commissioner and the  
9 Department of Revenue; to provide for related matters; to provide for an effective date; to  
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use  
14 taxes, is amended by adding a new article to read as follows:

15 "ARTICLE 5

16 48-8-240.

17 This article shall be known and may be cited as the 'Georgia Tourism Job Creation Act.'

18 48-8-241.

19 As used in this article, the term:

20 (1) 'Agreement' means a tourism attraction agreement for a tourism attraction project  
21 entered into, pursuant to Code Section 48-8-245, on behalf of the Department of  
22 Community Affairs and an approved company.

(2) 'Approved company' means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, or any other entity that is seeking to undertake a tourism attraction project pursuant to Code Section 48-8-245 and is approved, pursuant to subsection (b) of Code Section 48-8-244, by the commissioner of community affairs and by the governing authority of the city where the tourism attraction project is to be located if within a city or otherwise by the governing authority of the county where the tourism attraction project is to be located.

(3) 'Approved costs' means:

(A) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;

(B) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(C) All costs for construction materials and equipment installed at the tourism attraction project;

(D) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, or contractor or otherwise provided;

(E) All costs of architectural and engineering services, including but not limited to estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

(F) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;

(G) All costs required for the installation of utilities, including but not limited to water, sewer, sewage treatment, gas, electricity, and communications, and off-site construction of utility extensions if paid for by the approved company; and

(H) All other costs comparable with those described in this paragraph.

(4) 'Incremental sales and use tax' means those state and local sales and use taxes generated by the tourism attraction project above the amount of such sales and use taxes generated by the previous use of the property on which such project is located.

(5) 'Tourism attraction' means a cultural or historical site; a recreation or entertainment facility; a sports stadium or arena; an area of natural phenomena or scenic beauty; a convention hotel and conference center; an automobile race track with lodging and restaurant and other tourism amenities; a golf course facility with lodging and restaurant

and other tourism amenities; marinas and water parks with lodging and restaurant facilities; or an entertainment destination center designed to attract tourists to the State of Georgia. A tourism attraction shall be subject to the following conditions:

(A) A tourism attraction shall include commercial lodging facilities if the facilities constitute a significant portion of a tourism attraction project or the facilities are to be located on recreational property leased from a county, a municipal corporation, the state, or the federal government; and

(B) A tourism attraction shall not include the following:

(i) Facilities that are primarily devoted to the retail sale of goods, shopping centers, restaurants, or movie theaters; or

(ii) Recreational facilities that do not serve as likely destinations where individuals who are not residents of this state would remain overnight in commercial lodging at the tourism attraction.

(6) 'Tourism attraction project' or 'project' means the real estate acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of 30 years, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, and communications; and off-site construction of utility extensions if paid for by the approved company.

48-8-242.

The General Assembly finds and declares that the general welfare and material well-being of the citizens of this state depend in large measure upon the development of tourism in this state; that, in light of the current economic conditions marked by extreme unemployment and financial turmoil, it is in the best interest of this state to increase state tourism and economic development by inducing the creation and expansion of major tourism destinations that will advance the public purposes of relieving unemployment by preserving and creating jobs, particularly in geographic areas designated as enterprise zones due to disinvestment, underdevelopment, and economic decline, which would not exist if not for the sales and use tax refund offered by the State of Georgia to approved companies and by preserving and creating sources of tax revenues for the support of public services provided by this state; that the purposes to be accomplished under the provisions of this article are proper governmental and public purposes for which public moneys may be expended; and that the inducement of the creation and expansion of tourism attraction projects is of

paramount importance to the economy of this state, mandating that the provisions of this article are to be liberally construed and applied in order to advance public purposes.

48-8-243.

(a) In consideration of the execution of the agreement, each approved company shall be granted a sales and use tax refund from the incremental sales and use tax on:

(1) The sales generated by the approved company and arising at the tourism attraction; and

(2) The sales generated by the approved company that are attributable to and connected with any project to be a part of or an addition to an existing tourism attraction.

Each approved company shall keep and maintain annual records that delineate the increase in sales created by a project at an existing tourism attraction in order to be eligible to be granted a refund for that increase in sales.

(b) The approved company shall have no obligation to refund or otherwise return any amount of this sales and use tax refund to the persons from whom the sales and use tax was collected.

(c) For all privately owned tourism attractions, the term of the agreement granting the sales and use tax refund shall be ten years. For any tourism attraction owned by one or more counties or municipalities located in the State of Georgia or by an agency, authority, or instrumentality created or authorized by one or more counties or municipalities in the state of Georgia, the term of the agreement granting the sales and use tax refund shall be 20 years. The term for an agreement made pursuant to this subsection shall commence on the later of:

(1) The final approval of the agreement for purposes of the sales and use tax refund; or

(2) The date the tourism attraction opens for business and begins to collect sales and use taxes;

(d) Any sales and use tax collected by an approved company on sales transacted after final approval but prior to the commencement of the term of the agreement shall be refundable as if collected after the commencement of the term and applied to the approved company's first year's refund after activation of the term and without changing the term.

(e) The total sales and use tax refund allowed to the approved company over the term of the agreement shall be equal to the lesser of the total amount of the sales and use tax liability of the approved company or 25 percent of the approved costs for the tourism attraction project, subject to the following conditions:

(1) The sales and use tax refund shall accrue over the term of the agreement in an annual amount equal to the lesser of the sales and use tax liability of the approved company for that year or 2.5 percent of the approved costs; and

(2) Notwithstanding the 2.5 percent limitation of paragraph (1) of this subsection, any unused sales and use tax refunds from a previous year may be carried forward to any succeeding year during the term of the agreement.

(f) On or before March 31 of each year during the term of the agreement, an approved company shall file with the department a claim for the sales and use tax refund collected by the approved company and remitted to the department during the preceding calendar year pursuant to subsection (e) of this Code section.

(g) The department, in consultation with other appropriate state agencies, shall promulgate administrative regulations and require the filing of a refund form designed by the department to reflect the intent of this article.

48-8-244.

(a) The commissioner of community affairs, in consultation with other appropriate state agencies, shall establish standards for the filing of an application for tourism attraction projects by the promulgation of administrative regulations.

(b) The commissioner of community affairs shall consult with an advisory committee consisting of the commissioner of economic development, the state revenue commissioner, and the director of the Office of Planning and Budget who shall assist and advise the commissioner of community affairs in his or her review of applications filed by companies that are considering the development of a tourism attraction project. Within a reasonable time period after receiving a completed application, the commissioner of community affairs shall make a determination as to whether the applicant meets the requirements of the regulations, and the commissioner of community affairs shall recommend approval or denial of the application to the state revenue commissioner.

(c) An application for a tourism attraction project filed with the Department of Community Affairs shall include, but not be limited to:

(1) Marketing plans for the tourism attraction project that target individuals who are not residents of this state;

(2) A description and location of the tourism attraction project;

(3) Capital and other anticipated expenditures for the tourism attraction project and the anticipated sources of funding for such project;

(4) The anticipated employment and wages to be paid at the tourism attraction project;

(5) Business plans which indicate the average number of days in a year in which the tourism attraction project will be in operation and open to the public; and

(6) The anticipated revenues to be generated by the tourism attraction project.

(d) The commissioner of community affairs and the local governing authority specified in paragraph (2) of Code Section 48-8-241 may grant approval to the tourism attraction project if the project:

(1) Creates not less than 50 full-time positions and have approved costs in excess of \$50 million, and such project is to be a tourism attraction.

(2) Creates not less than 25 full-time positions and have approved costs in excess of \$25 million if such project is to be a part of or an addition to an existing tourism attraction or, if the existing tourism attraction can substantiate an increase in visitation to the tourism attraction by adding physical improvements that cost less than \$25 million, represents at the determination of the commissioner of community affairs a significant positive economic impact on the region and this state;

(3) Has a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in this state and the amount by which increased state and local tax revenues from the tourism attraction project will exceed the refund to be given to the approved company;

(4) Is located in a geographic area that has been designated as an enterprise zone pursuant to Code Section 36-88-5;

(5) Is located in a county that has been designated by the commissioner of community affairs as a tier 1 or tier 2 county under the county tier program in Code Section 48-7-40;

(6) Produces sufficient revenues and public demand to be operating and open to the public for a minimum of 200 days per year; and

(7) Does not adversely affect existing employment in the state.

48-8-245.

(a) The Department of Community Affairs shall enter into an agreement with any approved company which may also include as a partner any local development authority, and the terms and provisions of each agreement shall include, but not be limited to:

(1) The projected amount of approved costs, provided that any increase in approved costs incurred by the approved company and agreed to by the Department of Community Affairs shall apply retroactively for purposes of calculating the carry forward for unused sales and use tax refunds as set forth in subsection (e) of Code Section 48-8-243 for tax years commencing on or after July 1, 2010;

(2) A date certain by which the approved company shall have completed the tourism attraction project and begun operations. Upon request from any approved company that has received final approval, the Department of Community Affairs shall grant an extension or change, which in no event shall exceed 18 months from the date of final

